

**Minutes of the Louisiana Sentencing Commission  
Louisiana Sheriff's Association  
1175 Nicholson Dr., Baton Rouge, LA 70802  
January 16<sup>th</sup>, 2014  
1:00 p.m.**

The meeting was called to order by Honorable Ricky Wicker at 1:05 p.m.

**Members Present**

Honorable Ricky Wicker (proxy for Honorable Ricky Babin, Chairman)  
Honorable Charles Ballay  
Honorable Mike Cazes  
Mr. John DiGiulio (proxy for Mr. David Dugas)  
Honorable James T. Dixon  
Honorable Fredericka Wicker (proxy for Honorable Greg Guidry)  
Ms. Debbie Hudnall  
Honorable Robert Kostelka (by phone)  
James M. LeBlanc  
Dr. Cecil Guin  
Honorable Jules Edwards (proxy for Honorable Jay B. McCallum)  
Honorable Michael McDonald  
Mr. Rustin Legendre (proxy for Mr. Robert Mehrtens)  
Honorable Laurie A. White (proxy for Honorable Helena Moreno)  
Honorable Laurie A. White

**Committee and Advisory Members**

Melissa Callahan, DOC  
Tracy DiBenedetto, DOC  
Linda Lala Duscoe, Cure  
Jennifer Eagan, LASC  
Christine Fuido, Orleans Parish DA  
Whalen Gibbs, DOC  
Melanie Gueho, DOC  
Carle Jackson, LCLE  
Billy Kline, DOC  
Sandra Laborie, 5th Circuit Ct  
Dr. Mary Livers, OJJ  
Edward McAuliffe, Orleans Parish DA  
Genie Powers, DOC/P&P  
Carla Sigler, Calcasieu Parish DA's Office  
Sarah Tirrell, EBRDA  
Jennifer Watson, LCLE  
Opal West, LCLE  
Angela Whittaker, DOC  
Virginia Williams, LASC

**Guests**

Julie Brown, CAPARC  
Diana Dorroh, Together BR

Tawanda Green, CAPARC  
Justin Hadnott, CAPARC  
Mandel Pansy, Plaquemines Parish DA's Office  
George Steimel, LA LDL  
Bobby Thompson, Together BR  
Carole Turner, CAPARC  
Lydia Williams, CAPARC  
Checo Yancy, CAPARC

I. Welcome and Introductions  
*Honorable Ricky Wicker*

Honorable Ricky Wicker welcomed members and guests to the meeting. A quorum was present.

II. Approval of Minutes  
*Honorable Ricky Wicker*

Motion by Honorable Mike Cazes; seconded by John DiGiulio. The motion passed without objection.

III. Report on Status of the work  
*Honorable Ricky Wicker*

- A. Items approved by the Commission in December and transmitted to the Administration for preliminary consideration:
1. Amend L.S.A. R.S 40:967 to remove benefit restrictions for some provisions and to delete weight penalties for amounts less than 200 grams. This gives the court greater sentencing discretion.
  2. Repeal L.S.A. R.S. 40: 981.4 relating to Drug Traffic loitering as the statute was declared unconstitutional by the Louisiana Supreme Court in 1998.
  3. Amend L.S.A. R.S. 40:983 to add an additional penalty provision creating a misdemeanor class for first time offenders who purchase or transport supplies for the operation of a clandestine lab.
  4. Amendment of drug court statute to expand the eligibility for drug court participation by deleting the prohibition against defendants with prior felony convictions as listed in LSA-RS 14:2(B). It would also permit offenders who have a charge of domestic violence to be allowed to participate in the drug court programs. Actual acceptance of those eligible would still require district attorney screening and approval (gatekeeping).
  5. Safety Valves: Legislation similar to legislation passed in Georgia which, in non-violent, non-sex cases, allows the judge, upon making particular findings, to waive all or part of a mandatory minimum sentence or benefit restriction. This would generally impact sentences for certain drug offenses
  6. Bail: The Bail Team's work is ongoing and is before the Law Institute. This legislation would permit a jurisdiction to, at its discretion, set up a cash deposit bond system. This system has been successfully implemented in St. Charles and St. John parishes. Other jurisdictions have expressed serious interest in setting up a similar system. Sarah Tirrell clarified the money distributed from cash deposits don't go to Indigent Defender Board because the deposit falls under a different distribution system. The money goes towards District Attorneys, Sheriffs, and criminal court funds.
  7. Amend LA. R.S. 15:574.4 to address the current 85% rule for individuals committed of crimes of violence as follows: amend parole eligibility for first offenders to 65% and for second offenders to 75%.

B. Items previously approved by the Commission and transmitted to the Administration for preliminary consideration:

1. Crimes of Violence: This proposal would not change the list of crimes designated in La. R.S. 14:2B as crimes of violence. It would enact La. C. Cr. P. article 890.3 which would divide the offenses designated as crimes of violence in R.S. 14:2B into two groups. The first are those offenses that are necessarily violent based on the elements of the crime. The second contains those offenses where the elements of the crime do not require violence but the conduct may be violent. The proposal would designate the first group as mandatory crimes of violence, while the second group would be discretionary crimes of violence. This would give the prosecutor the authority to determine whether or not the conduct in the specific case constitutes violence. If the conduct is determined violent by the prosecutor, the prosecutor would so designate. Therefore the sentence in that case is rendered as a crime of violence as in the first group. If not, the sentence is rendered as a non-crime of violence offense under the statute for the offense without the crime of violence enhancements.

2. Expansion of minimum mandatory waiver excluding murder and sex offenses: This proposal would amend La. C. Cr. P. art. 890.1 to extend the waiver of minimum mandatory provisions to all crimes except murder and sex offenses. This means that the prosecutor, defense, and the Court would have the authority to agree to waive all or part of a mandatory minimum sentence or benefit restriction in a particular case. This sentence agreement could occur either pre or post trial.

3. Consistency in Release on Recognizance Statutes: This proposal would take the language adopted by the Legislature during the 2013 Regular Session [H.B. 297 that became ACT 261] and make all statutory release on recognizance statutes consistent. Generally, this ACT creates a rebuttable presumption that an offender charged with a crime within this group not be released on recognizance or on the signature of another person. This presumption may be overcome upon particular findings and with the opportunity for a contradictory hearing. **This has been returned to the Commission by the Administration for more work and will not be moving forward in the legislature this year.**

4. OUI: This proposal is basically a reorganized version of what was proposed last year. It does not dilute the OUI statute nor make major substantive changes. It does, however, reorganize OWI into several statutes which make the law easier to follow and utilize.

5. Parole Committee organization and procedural matters related to certification of Louisiana's Parole Committee by the American Correctional Association. These proposed amendments to La. R.S. 15:572, 15:574, and 15:574.4 address requirements of the American Correctional Association for accreditation. The proposals would stagger the board members' terms, enhance the board members' required qualifications, require all mandatory board training to comply with the guidelines set forth by the accrediting national agencies, define "major disciplinary offenses", and address pre-release programming.

6. Revision of the statutes pertaining to theft. This proposal seeks to simplify the Louisiana theft statute milieu by substantially reducing the 28 separate Louisiana theft statutes by 11 and potentially by 6 more. It would leave as is certain theft statutes for policy reasons, such as theft of a firearm. It would leave as is all theft by fraud statutes for later consideration. It would expand the sentence ranges to 6 separate ranges based upon value.

7. Medical Parole: This proposal would change "infirm" to "disabled" and utilize the standard medical definition in use by the Social Security Administration. This provides the Medical staff with a better defined

set of medical criteria. The Medical staff would only be involved in making medical determination. Once made the matter would proceed to the Secretary for security and other considerations, with the final decision resting with the Secretary. Removes restrictions on first and second degree murderers for consideration and also makes changes to the restrictions on contagious diseases.

8. Conditional medical release for nonviolent, non sex offenders with certain medical conditions for the purpose of moving them to an offsite medical facility for treatment. Once the treatment is completed, the medical release will be revoked by the pardon board. **This has been returned to the Department of Corrections by the Administration for more work and will not be moving forward in the legislature this year.**

9. Parole eligibility for 3rd Offenders at 33% of sentence: Proposal would make persons convicted for a non-violent, non-sex offenses for a third time eligible for parole after serving one third of their sentence. The eligibility time could not be later than one third of sentence since such offenders earn goodtime at the same rate as other offenders and the Parole Committee does not consider persons within six months of their goodtime release date as it takes that long for the parole process to conclude. If such offender was sentenced to 22 years, the parole eligibility date would occur about 1.5 years prior to goodtime release. If such offender was sentenced to 8 years, the parole eligibility date would occur about 195 days prior to the goodtime release date. Parole eligibility does not mean that the offender will be released, but only considered.

C. Items being worked on by the workgroups or completed by the workgroups and not yet considered by the Commission:

1. Create a cleansing period for purposes of calculating parole eligibility. If 10 years has passed since the maximum possible sentence for the previous conviction that conviction would "fall off" for purposes of calculating when an offender is eligible for parole. This provision would parallel the language contained in R.S. 15:5529.1 relative to habitual offenders.

2. Revision to benefit restrictions for Crimes of Violence: Prospective Parole eligibility for certain persons sentenced under R.S. 15:529.1: Persons sentenced under R.S. 15:529.1 to a term of imprisonment of 30 years or less would be parole eligible after serving 50% of sentence. This was voted out by Release Mechanisms Workgroup to the full commission but has not been taken up by the commission.

~~3. Specialty Court Expansion to address Veteran's Courts and Mental Health Courts: The Front End Workgroup is considering language which would expand specialty courts to encompass Veteran's Courts and Mental Health Courts.~~

~~4. Expansion of Reentry Courts: The 24th JDC and the 15th JDC are interested in legislation to permit them to set up reentry courts. This matter is being considered by the Secretary of the Department of Corrections to assure that sufficient space is available to accommodate more offenders.~~

~~5. Amendments to the statute enabling the 22nd J.D.C. pilot program allowing risk/needs assessment at sentencing.~~

~~6. Enactment of La. C.Cr.P. art. 923.1 to require the clerk of the court of appeal to transmit to the clerk of the district court and Department of Corrections general counsel any decree which either actually amends a sentence or orders the amendment of the Uniform Sentencing Commitment Order to address a clerical error.~~

D. Items which the Commission has previously voted to support

1. Expungement proposals developed by the Louisiana Law Institute: The Commission will issue a letter of support for the work of the Louisiana Law Institute on the complex subject of Expungement.
2. Local agreements relative to risk/need assessment at sentencing authorized by the Legislature during the 2013 Regular Session in the 22nd Judicial District Court: Basically this proposal is to support the 22nd JDC's efforts to work with their District Attorney and legislative delegation to modify the law passed in the 2013 Regular Session [SB 94, ACT 347]. This was adopted in the form of general support not requiring a letter.

V. Report of Committees

A. Front End

*Honorable Ricky Wicker*

i. Team #1 – Theft Statute Rewrite

**Honorable Ricky Wicker motioned theft statute re-write move forward to the Governor for vetting with the already proposed 11 changes, leaving the fraud and six industry-related charges to be worked on at a different time. Seconded by Honorable Laurie White. No oppositions.**

ii. Team #2- Drug Statutes Review and Comparative Analysis

- a. Group 3- Growing Drug Courts and other specialty courts  
*Carla Sigler, Calcasieu Parish DA's Office*

Expansion of Specialty Court to add Veterans Court

The Legislature of Louisiana recognizes that there is a critical need for criminal justice system programs to assist veterans in order to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed by veterans as a result of alcohol and drug use and alcohol and drug addiction. There is also a need for programs to assist veterans with mental health issues, including mental health diagnoses and undiagnosed mental illnesses. Moreover, many veterans suffer from co-occurring disorders of substance abuse and mental illness. These problems can cause veterans to have involvement with the criminal justice system. Therefore, it is the intent of the Legislature of Louisiana to create specialized court programs in the various districts of this state called "Veteran's Court Programs" to assist veterans in overcoming these issues, as they impact veterans, the criminal justice system, and society at large. The goal of these programs will be to reduce recidivism among veterans and to provide those who have served this country with the assistance that they need and deserve. (A change in the proposed legislation includes the definition to be consistent with federal guidelines, and to ensure eligibility and federal funding.)

Honorable Laurie White advised the group Judge Harmon heads a Mental Health Court in New Orleans. Honorable Ricky White commented she was consulted.

**Honorable Jules Edward move forward to the Governor for vetting. Seconded Honorable Mike Cazes. No oppositions.**

iii. Team #6 PreTrial release

**Judge Laurie White Motioned that the legislation to expand re-entry courts in the 24<sup>th</sup> and 15<sup>th</sup> JDC be sent to the governor for vetting. Seconded by Honorable Jules Edwards. No oppositions.**

- iv. Team #7 Risk/Needs at Sentencing deferred until February so Judge Knight may have more time for research.
- v. Notice of decisions in criminal appeals  
*Chris Crow, Clerk of Court of 1st Circuit Court of Appeal & Debbie Hudnall, Director, Clerks Association*

Enactment of La. C.Cr.P. art. 921.1

A. In addition to the requirements regarding transmission of notice of judgment and copies of decisions under the Uniform Rules of Louisiana Courts of Appeal, when a decision in an appellate court in a criminal appeal is rendered, the clerk of court shall transmit a notice or copy of the decision to the clerk of the court from which the appeal was taken and to the Louisiana Department of Public Safety and Corrections.

B. When a decision of the Supreme Court is rendered in a criminal appeal, the clerk of court shall transmit a notice or copy of the decision to the clerk of the court from which the appeal was taken and to the Louisiana Department of Public Safety and Corrections.

**Honorable Jules Edwards motioned to move forward to the Governor for vetting. Seconded Ms. Debbie Hudnall. No oppositions.**

B. Release Mechanisms

- i. Team #4- Parole for 3rd Offenders  
Cleansing Period  
*Genie Powers, Department of Corrections, Probation and Parole.*

Ms. Powers presented a proposal to amend LSA R.S. 574.4 to include the following: Notwithstanding the provisions of Subparagraph (a) of this Paragraph, a person, otherwise eligible for parole, convicted of a second felony offense shall be eligible for parole consideration upon serving thirty-three and one-third percent of the sentence imposed. The current offense shall not be counted as a second or subsequent offense if more than ten years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions, or between the expiration of the maximum sentence or sentences of each preceding conviction and the date of the commission of the following offense or offenses. In computing the intervals of time as provided herein, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state shall not be included in the computation of any of said ten year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses. The provisions of this Item shall not apply to any person who has been convicted of a crime of violence as defined in R.S. 14:2(B), has been convicted of a sex offense as defined in R.S. 15:541, has been sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible for parole.

**Honorable Jules Edwards motioned to move forward to the Governor for vetting. Seconded Mr. James T. Dixon. No oppositions.**

- ii. Heroin Lifers  
*Tracy DiBenedetto, Department of Corrections & Genie Powers, Department of Corrections, Probation and Parole.*

This proposal would amend R.S. 15: 574.4 to correct an inadvertent error to permit parole eligibility for those sentenced to life sentences for heroin convictions where the original life sentences were concurrent life sentences for more than one count.

**Honorable Jules Edwards motioned to move forward to the Governor for vetting. Seconded Honorable Laurie White. No oppositions.**

C. Re-Entry

*Whalen Gibbs, Department of Corrections*

Re-Entry is working on expanding Mentoring, and educating employers on hiring ex-offenders

D. Research and Tech – Did not meet.

**VI. Honorable Ricky Wicker motioned to add a new workgroup, Juvenile Justice, headed by Dr. Mary Livers. Seconded by Honorable Jules Edwards. No oppositions.**

VII. Other business

Judge Laurie White said the group of judges involved in this morning's conference call regarding Re-Entry agreed to meet at Department of Corrections Headquarters in Baton Rouge at 9:00 am before the 1:00 Sentencing Commission meeting February 21st.

**VIII. Honorable Louis Daniel motioned to adjourn. Seconded by Honorable Jules Edwards. No objections. The meeting was adjourned at 2:03 p.m.**